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 BY DPTY. CLK. 17-19-05
 DATE

UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,
 Plaintiff,

v.

Civil Action No.

ONE COMPAQ MODEL 2100 LAPTOP
 COMPUTER SERIAL NUMBER CNF43021JP
 CONTAINING A SUBFOLDER ENTITLED
 "ANIMAL FARM" AND UNALLOCATED SPACE)
 ON HARD DRIVE CONTAINING PICTURES,
 Defendant.

05 - 11524 PBS
 MAGISTRATE JUDGE elen

VERIFIED COMPLAINT FOR FORFEITURE IN REM

The United States of America, by its attorney, Michael J. Sullivan, United States Attorney for the District of Massachusetts, in a civil action of forfeiture pursuant to 19 U. S. C. §1305 and 19 U.S.C. §1595a, alleges that:

1. This Court has jurisdiction in this matter pursuant to 28 U.S.C. §§1345 and 1355. Venue is appropriate pursuant to 28 U.S.C. §1395.

2. The property consists of One Compaq Model 2100 Laptop Computer Serial Number CNF43021JP (the "Defendant Computer") containing a subfolder entitled "Animal Farm" and unallocated space on hard drive containing pictures (the "Defendant Images").

3. The in rem Defendant Computer and Defendant Images are now, and, during the pendency of this action, will be within the jurisdiction of this Court.

4. As detailed in the Affidavit of United States Department of Homeland Security, U.S. Immigration and Customs Enforcement

Special Agent Edward P. Murphy, attached as Exhibit A and incorporated herein by reference, the United States has probable cause to believe that the Defendant Images contained on the Defendant Computer's hard drive represent obscene material prohibited from importation into the United States, by 19 U.S.C. §1305, and are, therefore, subject to forfeiture to the United States pursuant to 19 U.S.C. §1305. Also, the United States has probable cause to believe that the Defendant Computer was used to facilitate the illegal importation of the Defendant Images, and is, therefore, subject to forfeiture to the United States pursuant to 19 U.S.C. §1595a.

WHEREFORE, the United States of America prays:

1. That a Warrant and Monition, in the form submitted herewith, be issued to the Secretary of the Department of Homeland Security, or his designee, commanding them to take custody of the Defendant Computer and Defendant Images and give notice to all interested parties to appear and show cause why the forfeiture should not be decreed;

2. That judgment of forfeiture be decreed against the Defendant Computer and Defendant Images;

3. That thereafter, the Defendant Computer and Defendant Images be disposed of according to law; and

4. For costs and all other relief to which the United States may be entitled.

Respectfully submitted,

MICHAEL J. SULLIVAN
United States Attorney

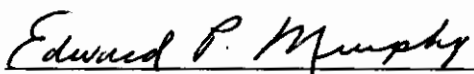
By: 

JENNIFER H. ZACKS
Assistant U.S. Attorney
1 Courthouse Way, Suite 9200
Boston, MA 02210
(617) 748-3100

Date: 7/19/05

VERIFICATION

I, Edward P. Murphy, Special Agent, United States Department of Homeland Security, U.S. Immigration and Customs Enforcement, state that I have read the foregoing Verified Complaint for Forfeiture In Rem, and that the contents thereof are true to the best of my knowledge, information and belief.



Edward P. Murphy, Special Agent
United States Department of Homeland
Security
U.S. Immigration and Customs
Enforcement

Date: 7-19-05

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Boston

Then personally appeared before me the above-named Edward P. Murphy, Special Agent, United States Department of Homeland Security, U.S. Immigration and Customs Enforcement who acknowledged the foregoing to be true to the best of his knowledge, information and belief, on behalf of the United States of America.

Subscribed to and sworn to before me this 19th day of July, 2005.

Lisa J. Talbot
Notary Public
My commission expires: 5/29/09

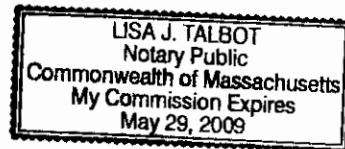


EXHIBIT A

AFFIDAVIT OF EDWARD P. MURPHY

I, Edward P. Murphy, state the following under oath:

1. I am a Special Agent with the United States Department of Homeland Security, U.S. Immigration and Customs Enforcement (ICE) and have been so employed for approximately twenty-two (22) years¹. From September 2001 to October 2004, I was assigned to the Asset Identification & Removal Group (AIRG) in the Boston Field Office. As a Special Agent, I have received training in both Customs and Immigration law and procedures, including the asset forfeiture provisions related to those laws. Since October 2004, I have been assigned as a Special Agent in the Operation Support Group with ICE. My duties as a Special Agent in the Operations Support Group of ICE involve computer forensics, and acting as a coordinator for background clearances, and an asset sharing coordinator for ICE/Boston office. As a Special Agent, I have traced, seized and forfeited assets and proceeds derived from or used in unlawful activities, including money laundering, narcotics smuggling and importation of immoral or obscene items.

2. I submit this affidavit in support of a Complaint for Forfeiture in rem against one Compaq Laptop Computer Serial Number CNF43021JP (the "Defendant Computer") Containing a Subfolder

¹In March 2003, the agency formerly known as United States Customs Service became known as United States Department of Homeland Security, U.S. Immigration and Customs Enforcement (ICE).

entitled "Animal Farm" and Unallocated Space on Hard Drive Containing Pictures(the "Defendant Images"). As described in this Affidavit, I have probable cause to believe that the Defendant Images contained on the Defendant Computer's hard drive represent obscene materials prohibited from importation into the United States, pursuant to 19 U.S.C. §1305, and are, therefore, subject to forfeiture to the United States pursuant to 19 U.S.C. §1305.

3. Also, I have probable cause to believe that the Defendant Computer was used to aid in, or to facilitate the illegal importation of any article, in violation of 19 U.S.C. §1595a, and is, therefore, subject to forfeiture to the United States pursuant to 19 U.S.C. §1595a.

4. On June 28, 2005, flight number Aer Lingus EI-139 arrived at Logan Airport, Boston, Massachusetts. The flight originated from Shannon, Ireland. One of the passengers, Eugene John Fitzgerald ("Fitzgerald"), was directed to a secondary baggage for a routine inspection and became nervous. Fitzgerald became very evasive when answering routine questions concerning his travel itinerary posed by Customs officers. Fitzgerald had in his possession the Defendant Computer, which was examined by Customs officers James Bailey and Anthony Auterio.

5. The Defendant Computer's hard drive contained eleven (11) movie files (mpegs) contained in a subfolder entitled "Animal Farm." In addition, a forensic search of the unallocated space on

the hard drive disclosed approximately fourteen (14) pictures (jpegs)². Both the movies and the pictures consisted entirely of explicit depictions of human females engaged in sexual activity with a variety of animals, including dogs, snakes, and horses. The movies and pictures are collectively referred to as the "Defendant Images."

6. Fitzgerald was questioned by Officers Bailey and Auterio regarding the contents of the computer, and stated that he knew the Defendant Computer contained pornography and it was only for his personal viewing. Fitzgerald later stated that the pictures were for a friend. Agents explained to Fitzgerald that importation of obscene materials is prohibited. The Defendant Computer containing the Defendant Images was detained.

7. The importation of immoral or obscene articles is prohibited by 19 U.S.C. §1305, which provides:

All persons are prohibited from importing into the United States....any obscene book, pamphlet, paper, writing, advertisement, circular, print, picture, or other representation, figure, or image on or of paper or other material, or any cast, instrument, or other article which is obscene or immoral....

9. 19 U.S.C. §1305 also provides for the forfeiture of such items, stating:

²The unallocated space on the hard drive contains photos that have been viewed, but were not saved to any particular area on the computer.

No such articles whether imported separately or contained in packages with other goods entitled to entry, shall be admitted to entry... and all such articles.... and the entire contents of the package in which such articles are contained shall be subject to seizure and forfeiture.... 19 U.S.C. §1305(a).

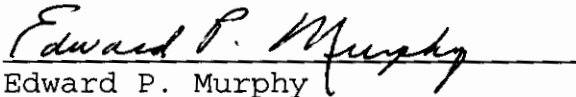
10. In addition, 19 U.S.C. §1595a authorizes the forfeiture of any item used to facilitate the illegal importation of any article:

Except as specified in subsection of this title, every vessel, vehicle, animal, aircraft, or other thing used in, to aid in, or to facilitate, by obtaining information or in any other way, the importation, bringing in, unloading, landing, removal, concealing, harboring, or subsequent transportation of any article which is being or has been introduced, or attempted to be introduced, into the United States contrary to law, whether upon such vessel, vehicle, animal, aircraft, or other thing or otherwise, may be seized and forfeited together with its tackle, apparel, furniture, harness, or equipment. 19 U.S.C. §1595a(a).

11. Based on the information described above, I have probable cause to believe that the Defendant Images represent obscene material prohibited from importation into the United States, by 19 U.S.C. §1305, and are, therefore, subject to forfeiture to the United States pursuant to 19 U.S.C. §1305.

12. In addition, I have probable cause to believe that the Defendant Computer was used to facilitate the illegal importation of the Defendant Images, and is, therefore, subject to forfeiture to the United States pursuant to 19 U.S.C. §1595a.

Signed under the pains and penalties of perjury this 19~~th~~ day
of July, 2005.


Edward P. Murphy
Special Agent
United States Department of
Homeland Security
U.S. Immigration and Customs
Enforcement

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

United States of America

(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
Jennifer H. Zacks, AUSA
U.S. Attorney's Office
One Couthouse Way, Suite 9200, Boston, MA 02210
(617) 748-3100

DEFENDANTS

One Compaq Model 2100 Laptop Computer Serial Number
CNF43021JP Containing a Subfolder Entitled "Animal Farm"
and Unallocated Space on Hard Drive Containing Pictures

County of Residence of First Listed
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

05

054 PE

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | DEF | DEF |
|---|---|---|
| Citizen of This State | <input type="checkbox"/> 1 <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State <input type="checkbox"/> 4 <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State <input type="checkbox"/> 5 <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3 | Foreign Nation <input type="checkbox"/> 6 <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES |
|--|--|---|---|--|
| <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability | PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input checked="" type="checkbox"/> 690 Other | <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609 | <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions |
| REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property | CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights | PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 Habeas Corpus: General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition | | |

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

(Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

The United States seeks forfeiture of the Defendant Computer and Defendant Images pursuant to 19 U.S.C. §1305 and 19 U.S.C. §1595a.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE
07-19-2005

SIGNATURE OF ATTORNEY OF RECORD

A. H. F.

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) United States v. One Compaq Model 2100 Laptop Computer Serial Number CNF43021JP Containing a Subfolder Entitled "Animal Farm" and Unallocated Space on Hard Drive Containing Pictures

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

— I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.

— II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950.

*Also complete AO 120 or AO 121 for patent, trademark or copyright cases

— III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.

X IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.

— V. 150, 152, 153.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). 05-11524-PBS If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

N/A

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES ☐ NO ☒

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES ☐ NO ☒

If so, is the u.s.a. or an officer, agent or employee of the u.s. a party?

YES ☐ NO ☐

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 usc §2284?

YES ☐ NO ☒

7. Do all of the parties in this action, excluding governmental agencies of the united states and the commonwealth of massachusetts ("governmental agencies"), residing in massachusetts reside in the same division? - (See local rule 40.1(d)).

YES ☐ NO ☐ N/A

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division ☐ Central Division ☐ Western Division ☐

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division ☐ Central Division ☐ Western Division ☐

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES ☐ NO ☐ N/A

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Jennifer H. Zacks, AUSA

ADDRESS U.S. Attorney's Office, One Courthouse Way, Suite 9200, Boston, MA 02210

TELEPHONE NO. 617-748-3100

TRANSMITTAL

Once case is assigned,
please forward to Civil
Docketing, U.S. Attorney's
Office.

CLERK OF COURT:

05 - 11524 PBS

RE: United States of America vs. One Compaq Model 2100 Laptop Computer Serial
Number CNF43021JP Containing a Subfolder Entitled
"Animal Farm" and Unallocated Space on Hard Drive
Containing Pictures

PLEASE DESIGNATE:

Court Number: _____

Date Filed: July 19, 2005

Assistant U.S. Attorney: Jennifer H. Zacks



U.S. Department of Justice

United States Attorney
District of Massachusetts

Telephone: (617) 748-3100

Jennifer H. Zacks, Assistant U.S. Attorney

John Joseph Moakley United States Courthouse
Asset Forfeiture Unit
1 Courthouse Way, Suite 9200
Boston, Massachusetts 02210

July 19, 2005

Clerk's Office
United States District Court
District of Massachusetts
1 Courthouse Way
Boston, Massachusetts 02210

05-11524 PBS

Re: United States v. One Compaq Model 2100 Laptop Computer
Serial Number CNF43021JP Containing a Subfolder entitled
"Animal Farm" and Unallocated Space on Hard Drive
Containing Pictures

Dear Sir/Madam:

Enclosed for filing please find the following in connection with the above referenced matter:

1. Verified Complaint for Forfeiture In Rem;
2. Proposed Warrant and Monition; and
3. Civil Action Cover Sheet and filing papers for the Court.

Thank you for your attention in this regard.

Very truly yours,

MICHAEL J. SULLIVAN
United States Attorney

By: _____


Jennifer H. Zacks
Assistant U.S. Attorney

JHZ:jmd
Enclosures